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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,396	03/16/2001	Rainer Anderlik	49256	3913

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KEIL & WEINKAUF
1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762,396

Applicant(s)

ANDERLIK ET AL.

Examiner

Neil Levy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-14 and 17-22 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Acknowledgement is made of amendment and article of 10/28/04, paper # 16.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4-14, 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pougalan et al 4734778 in view of Sand-4598006 and Perman et al 5340614.

Pougalan (of record) incorporates polymeric impregnated particles in a polymer of high TG; EVA (col.3, lines 40-63).

Sand teaches preparation of articles of plastics containing odorants, inclusive of fragrances and pest control agents (col.3, top) by contacting, the instant mixing, the odorant with a crosslinked rubbery swellable plastic; polypropylene, of the instant TG (col.3, lines 55-67), in the form of flakes and pellets, ultimately to form molded articles (col.4, lines 31-36). Sand's process utilizes supercritical agents, providing thereby added benefits (col.4, line 55-col.5, top) but avoiding microvoids. Closed containers are used (example 1). Sand did not use a second polymer.

Perman shows additives, including bioactives (col.6, bottom) can be incorporated into any swellable polymer (col.9, lines 30-49) including rubbers. Although crystallinity, density; orientation and degree of crosslinking affect impregnation, even polymers high in these parameters are swellable and impregnatable (col.11, lines 22-47). Examples show the polymer is in particulate form (col. 12, bottom-col.13, top); powder, beads, pellets. However, incorporation, into a second polymer is not discussed.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize long lasting impregnated bioactive polymeric articles to utilize the pougalane incorporation methods, with use of sands' pest control odorants, prepared by mixing solid swellable polymers with odorant bioactives. Modification to include crosslinked rubber-like polymers is taught by perman, showing even these polymers can be utilized, so long as the impregnation is with supercritical fluids. Thus, the same process as Sands can provide the same pellets, powders, of bioactive, odorant forms.

Claims 5, 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Please check spelling; line 4 of claim 5 recites powder of pellet; not clear; we assume powder or pellet is intended. Claim 7 depends on 6; 6 requires graft rubber; 7 permits of non-rubber first polymers.

Applicant's arguments filed 10/28/04 have been fully considered but they are not persuasive. Applicant argues Pougalan and Klimesch fail to use crosslinked polymers; however, Sand uses a method which can incorporate cross linked, rubbery polymers, as taught by Perman. These products; powders, pellets, can be made into articles, as shown by pougalan, and as suggested by Sand. The instant process is thus an obvious one.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday from 7:00a.m to 5:30p.m.

A handwritten signature in black ink, appearing to read "Neil Levy", is located in the bottom right corner of the page.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd

January 6, 2005



NEIL S. LEVY
PRIMARY EXAMINER